Tri-Valley Cities

DANVILLE • DUBLIN • LIVERMORE • PLEASANTON • SAN RAMON

November 13, 2018

Chairman Ajit Pai
Commissioner Michael O'Rielly
Commissioner Brendan Carr
Commissioner Jessica Rosenworcel
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: MB Docket No. 05-311. Second Further Notice of Proposed Rulemaking. Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992.

Honorable Chairman Pai and Commissioners O'Rielly, Carr, and Rosenworcel:

The California Tri-Valley Cities of Danville, Dublin, Livermore, Pleasanton, and San Ramon strongly opposed to the Further Notice of Proposed Rulemaking (MB Docket No. 05-311), which proposes to allow cable companies to deduct the fair market value for a wide range of public benefits from their franchise fee obligations. This will have a massive impact on the Cities' ability to provide and transmit public, educational, and government (PEG) channels to our constituents.

PEG programming offers a host of community benefits, including public access channels, educational access channels, and government access channels all aimed at providing locally beneficial information:

- Public access channels are available for use by the general public, non-commercial in nature, and generally free from editorial oversight.

- Educational channels are typically dedicated for learning institutions, such as local schools, colleges, and universities, for school related activities, fully televised courses of instruction, and other educational purposes.

- Government access channels are often the easiest and best ways for the local governments to be transparent, often televising city, county, school district, and other government meetings or live local election returns, town hall meetings, public debates, and other public policy topics.

First, the proposed rule indicates that cable companies would be permitted to deduct the fair-market value of in-kind contributions from their franchise fees paid to municipalities. However, The "fair market value" of such services may be impossible to discern and would likely be a source of litigation between cable operators and local governments. Further, the FCC's definition of "in-kind" is broadly written. Given a lack of clarification, we can only assume the following may occur:

- Cable operators currently paying the typical five percent franchise fee permitted by federal law will be able to reduce their current franchise fee payment by the fair market value of all in-kind contributions, with the exception of PEG capital costs required by the franchise associated with the construction of PEG access facilities and build out requirements.

- As a result, there will be significant reductions in cable franchise fees, depending on how the “fair market” value for PEG capacity and transmission is calculated within any given jurisdiction.

- In-kind contributions may include free service to schools, libraries, and other government buildings, the value of PEG channel capacity, the cost of electronic programming guides, or discounts on internet service as part of the cable franchise.

- PEG programming would be severely limited, if not altogether eliminated in some or most jurisdictions.

Secondly, it is extremely concerning that the proposed rule would allow a cable company to use locally-owned rights-of-way for efforts unrelated to providing cable access, while also preventing local governments from regulating the facilities and equipment used by cable operators in the provision of non-cable services. It is untenable that municipalities would be prevented from conducting the appropriate oversight of how taxpayer-owned infrastructure is used to benefit for-profit companies’ bottom line. With this proposed rule, we are concerned that the following may become true:

- Cable companies could use local rights of way for any purpose, regardless of the terms of the franchise, and avoid having to pay fair compensation to the local government for the use of publicly funded assets in the rights of way.

- Cable companies could install wireless facilities with little to no public input, without having to meet any aesthetic or equipment size requirements.

- Cable companies would gain a significant advantage against their competitors, including telecommunications providers, even though the FCC has just adopted an order lowering their deployment standards. This could result in a race-to-the-bottom deployment strategy for both cable and telecommunications companies.

Furthermore, California municipalities like ours are especially impacted because of their inability to negotiate directly with cable companies. When California instituted the Digital Infrastructure and Video Competition Act in 2006, it made the California Public Utilities Commission (CPUC) the sole franchising authority in the state, and preserved many of the provisions commonly found in local franchise ordinances. This effectively streamlined deployment while keeping local government revenues intact, ensuring that local public rights-of-way remained under control of cities and counties, and that a sufficient amount of capacity on cable networks was preserved for public, educational, and government (PEG) access channels. Unfortunately, the FCC has not provided an exemption for states with centralized franchising authority.

Fair and appropriate use of the public right-of-way is crucial to protecting taxpayers’ investment in infrastructure. Our residents should not have to pay the price so that cable companies can reduce their costs. For these reasons, the Tri-Valley Cities oppose the proposed rule and respectfully urges the FCC to reject it.

Sincerely,

Town of Danville
Mayor Newell Arnerich

City of Dublin
Mayor David Haubert

City of Livermore
Mayor John Marchand

City of Pleasanton
Mayor Jerry T. Thorne

City of San Ramon
Mayor Bill Clarkson

cc:
Congressman Eric Swalwell
Congressman Mark DeSaulnier
Senator Dianne Feinstein
Senator Kamala Harris